IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 18215 of 2007(R)

IA 329/07 IN OS.86/2006 of MUNI-MAGI.COURT,PATTAMBI

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PETITIONER:

MOHAMMEDALI, AGED 76 YEARS,
S/O. PUTHIYAVEETTIL HYDOSE HAJI,THRITHALA AMSOM,
KANNANNUR DESOM, OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

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1. MUHAMMED MUSALIAR,
S/O. PALLIMANHAYALIL MOOSA.

2. JAMEELA,
W/O. PALLIMANHAYALIL MUHAMMED MUSALIAR.

3. ABDUL SAMAD,
S/O. PALLIMAHAYALIL MOHAMMED MUSALIAR.

4. MUHAMMED,
S/O. PUTHENVEETTIL ABOOBACKER.

5. ABDUL KHADER,
S/O. PUTHENVEETTIL MUHAMMED.

6. MUHAMMADALI,
S/O. PUTHENVEETTIL MUHAMMED.
ALL RESIDING AT THRITHALA AMSOM,
KANNANNOOR DESOM, OTTAPALAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.(C) No. 18215 OF 2007 R
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Dated this the 15th June, 2007

J U D G M E N T

This writ petition is filed seeking to quash the order passed in I.A. No. 329/07 in O.S. No. 86/06. O.S. No. 86/06 is filed by the present writ petitioner against one Mohammed Musaliar, his wife and son for an injunction to restrain them from interfering with the peaceful possession over the B schedule pathway. O.S. No. 36/05 is a suit filed by Mohammed Musaliar and his wife Jameela who are the defendants in O.S. No. 86/06 against one Mohammed and his sons. The prayer in the said suit is for an injunction to restrain them from interfering with the peaceful possession of the plaintiff over the property and that they should not lay a pipe through the plaint schedule property. So, in one case the subject matter is with respect to the right of way and a reading of the averment in the plaint would reveal that the alleged pathway is a public pathway used by the inhabitants of the locality and therefore the defendants in the suit did not have any manner of right to interfere with that pathway.

The averment in the other suit is with respect to an injunction on immovable property with a specific prayer that they should not lay down a pipe through the property. The defendants in O.S. No. 36/05 have nothing to do with the plaint prayer in O.S. No. 86/06. The question to be determined in the suit is one with respect to the existence of a way and the right of the inhabitants of the locality to use that way and the other case is with respect to the enjoyment of the property and laying a pipe through the property. The reliefs sought are totally different and the defendants, as I mentioned earlier, in O.S. No. 36/05 have nothing to do with O.S. No. 86/06. Under those circumstances I find that there need not be any joint trial of this case and therefore the order passed by the learned Munsiff in refusing for a joint trial is strictly in accordance with law and therefore the writ petition is dismissed.

M.N. KRISHNAN
JUDGE

jan/